IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANIGARH

Crl. Misc. No. 27165-M of 2007

Date of decision : 11.05.2007

Ram Kumar Beniwal

.... Petitioner

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. Kanwaljit Singh, Senior Advocate with
Mr. P.K. Ganga, Advocate,
for the petitioner (CRM No. 27165-M of 2007).

Mr. T.S. Sangha, Advocate
for the petitioner (Crl. Misc. No. 25301-M of 2007)

Mr. S.S. Mor, Senior Deputy Advocate General, Haryana.

S.D. Anand, J.

These two bail applications (Crl. Misc. No. 27165-M of 2007 filed by Ram Kumar Beniwal, District Project Coordinator, Kaithal and Crl. Misc. No. 25301-M of 2007 filed by Suresh Kumar, Head Clerk of the employment of Sarvshiksha Abhiyan, Kaithal) merit joint disposal as these arise out of same transaction/FIR bearing No. 189 dated 13.04.2007, under Section 7/11 of the Prevention of Corruption Act, 1988, Police Station City Kaithal, District Kaithal.

The prosecution allegations are as under:-

Under Sarv Shiksha Abhiyan (for short `SSA'), the State Project Director, SSA, Haryana sanctioned the purchase of carpets for Village Education Committee (for short `VEC') and also the purchase of laboratory equipments etc. for the upper primary schools. The financial sanction and administrative approval for the procurement of Science Kits

for upper primary school in District Kaithal was communicated by the State Project Director to the District Project Coordinator, SSA, Kaithal vide former letter dated 25.01.2007. Likewise, it was vide letter dated 26.01.2007 that the State Project Director accorded financial sanction and administrative approval for the procurement of carpets for VECs in District Kaithal. The carpets to be purchased were to the tune of Rs. 13.80 lakhs.

The prosecution allegations is that both the petitioners obtained illegal gratification from the concerned quarters, in the matter of purchase aforementioned. When the aspect aforementioned surfaced, the two-sum i.e. both the petitioners gave a confessional statement in writing conceding the act attributed to them and also offered to deposit the indicated amount with the Red Cross Society. Ultimately, a sum of Rs. 10 lakhs was deposited, as Gupt Dan, in the office of Red Cross Society.

Mr. Kanwaljit Singh, the learned counsel for the petitioner (Ram Kumar Beniwal) argues that there is no way the petitioner could have obtained any illegal gratification in the matter because the purchase had been made from Khadi Board which is an approved source for a such like purchase and the entire payment was made by a crossed draft which was duly accounted for in the account of Khadi Board.

Mr. T.S. Sangha, learned counsel appearing on behalf of the petitioner (Suresh Kumar) adopted the plea aforementioned.

Learned Senior Deputy Advocate General, Haryana appearing on behalf of State of Haryana argues that the methodology in the context is as under:-

The Khadi Board does not manufacture the articles purchased. It would procure articles from the open market and supply the same to the

Government. Those supplying the articles to the Khathi Board would, thereafter, part with the agreed amount as illegal gratification. The payment of amount by crossed cheque and noticing thereof in the account of the approved source, the learned Senior Deputy Advocate General, proceeds to argue, would not negate the allegation of passing of illegal gratification. He further argues that the aspect of admissibility or otherwise of the confessional statements notwithstanding (as it would be adjudicated upon at the trial), both the petitioners cannot wriggle of the effect that they had furnished the confessional statement in their own hand and had also deposited a sum of not less than Rs. 10 lakhs in pursuance thereof.

The evil of corruption is eating into the vitals of our society. The rampant corruption has eroded the faith of common man in the efficacy of the governmental agencies to work for the upliftment of the public at large.

In the circumstances of the case, it is evident that a sum of Rs. 10 lakhs did come to be deposited in the Red Cross account after the making of confessional statements by the petitioner-accused. The legal validity or otherwise of those confessional statements would, obviously, be adjudicated upon at the trial. However, it cannot be lost sight of that these statements bear the signatures of both the petitioners.

It is not for nothing that a sum of Rs. 10 lakhs was deposited into the accounts of the Red Cross Society. By the very nature of things, the identity of the depositor cannot be ascertained as it is indicated to be a Gupt Dan. The ascertainment of identity of the middleman is equally important to expose the nefarious designs of the corrupt.

I find force in the plea of the learned Senior Deputy Advocate

General, Haryana, that custodial interrogation of both the petitioners would be required in order to enable the Investigating Agency to find out the source of deposit of the amount of Rs. 10 lakhs. The Investigating Agency may like to relate the deposit aforementioned to the resources available at the command of the petitioners. The grant of anticipatory bail to the petitioners would disable the Investigating Agency from going deep into the matter and trying to find out the relatebility of the deposit aforementioned to the petitioners.

Mr. T.S.Sangha, learned counsel appearing on behalf of the next petitioner (Suresh Kumar), also argues that the alleged confessional statement is of the other petitioner only and that the signatures of petitioner – Suresh Kumar had been obtained only as an attesting witness thereof.

The plea raised deserves to be outrightly negatived. Apart from the main statement, there is also an additional statement dated 31.03.2007 vide which both the petitioners had conceded liability to deposit a sum of Rs. Six lakhs in the office of Red Cross Society of District Kaithal on 01.04.2006 by 2 p.m.

Apart therefrom, there is also force on the plea on behalf of the State of Haryana that the custodial interrogation of the petitioners would also be required to find out the connection of Satish Gupta in the impugned purchase.

The powers vested in this Court under Section 438 Cr.P.C. are extra ordinary in character and cannot be invoked as a matter of course. This Court would like to exercise discretion in the matter of grant of anticipatory bail only if it is found that the Investigating Agency is inclined to harass any innocent member of the Society. The present is not a case of

that category. All that the Investigating Agency is endeavouring to find out is the fixture of accountability for the impugned episode and to bring the culprits, accused of gaining at the cost of public exchequer, to book.

In the light of the foregoing discussion, I do not find to be a fit case to order the release of the petitioners Ram Kumar Beniwal and Suresh Kumar on anticipatory bail.

The plea raised by them in the relevant behalf shall stand declined accordingly.

May 11, 2007 (S.D. Anand)
vkd Judge